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Trial

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 ARTURO CARAVANTES and
4 FRANCISCO SOTARRIBA
Plaintiffs

v.

09 CV 7821 (RPP)

5 53RD STREET PARTNERS, LLC
6 d/b/a REMI RESTAURANT and
OSCAR VELANDIA
Defendants

-----x

New York, N.Y.

March 26 2012

10:08 a.m.

9 Before:

10 HON. ROBERT P. PATTERSON, JR.

11 District Judge

12 APPEARANCES

13 PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

Attorneys for Plaintiffs

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AARON S. DELANEY

15 MAYUR P. SAXENA

MOIRA KIM PENZA

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NICOLE HALLETT

19 EPSTEIN BECKER & GREEN PC

20 Attorneys for Defendants

KERRY M. PARKER

21 ALKIDA KACANI

22 - also present -

23 CARLOS CRUZ - Spanish Interpreter

LILIANA HALAC - Spanish Interpreter

24 RANDALL CARTER - Plaintiff AV Tech

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1 THE CLERK: Arturo Caravantes versus 53rd Street
2 Partners.

3 Is the plaintiff ready for trial?

4 MR. DELANEY: Yes, we are, your Honor.

5 THE CLERK: And defendant ready for trial?

6 MR. PARKER: Yes, your Honor.

7 THE COURT: All right. I understand Mr. Delaney,
8 Ms. Hallett and Mr. Saxena are going to represent the
9 plaintiff?

10 MR. DELANEY: Yes, your Honor, and Ms. Penza at the
11 end of the table here.

12 THE COURT: And who?

13 MR. DELANEY: Ms. Moira Kim Penza.

14 THE COURT: And it is rather unusual to have four
15 trial counsel.

16 MR. DELANEY: Yes, your Honor. Ms. Nicole Hallett is
17 co-counsel with the Urban Justice Center. We have been
18 co-counsel in this case, and we have been working a
19 collaborative effort on the case.

20 THE COURT: But there are four; I am talking about the
21 number four.

22 MR. DELANEY: Yes, your Honor. It has been a group
23 effort for all of us.

24 THE COURT: How is it going to be divided?

25 MR. DELANEY: To try the case, your Honor? I will be

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1 taking the lead role, and I will do the direct of the two main
2 plaintiffs and I will be crossing most of the defendants'
3 witnesses. But each at the counsel table will be directing a
4 witness or two as well.

5 THE COURT: Well, I have to know how they are going to
6 be broken down.

7 MR. DELANEY: Sure. I am going to be doing the
8 directs of the two main plaintiffs over the next two days.

9 THE COURT: I am talking about the witnesses.

10 MR. DELANEY: Sir, I guess I am not understanding your
11 question, your Honor.

12 THE COURT: I have to have one counsel for each
13 witness.

14 MR. DELANEY: Oh, absolutely, your Honor.

15 THE COURT: I want to know who is going to be doing
16 the direct on direct and who is going to be doing the
17 cross-examination.

18 MR. DELANEY: Sure.

19 THE COURT: They have got to be the same person.

20 MR. DELANEY: Yes. There are only going to be one
21 counsel for each witness.

22 THE COURT: Which witnesses?

23 MR. DELANEY: I will be doing the directs for
24 Mr. Caravantes and Mr. Sotarriba. Ms. Kim Penza will be doing
25 the directs for Mr. Sergio Pastor; he is one of the witnesses.

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1 Ms. Hallett will be doing the direct of Martina Caravantes,
2 Mr. Caravantes' wife. Mr. Saxena will be doing the direct of
3 our expert, Dr. Jessica Pearson.

4 THE COURT: I see. All right.

5 And I gather that Mr. Parker and Miss Kacani, is that
6 right?

7 MS. KACANI: Yes.

8 THE COURT: You are going to split your witnesses
9 also, or not?

10 MR. PARKER: Your Honor, I will be --

11 THE COURT: You just have to keep them straight.

12 MR. PARKER: Understood.

13 (Pause)

14 Your Honor, I will be handling the cross-examinations
15 of all of the plaintiffs' witnesses, and I have not yet decided
16 whether or not Ms. Kacani will handle any directs of our
17 witnesses, but I will be handling the bulk of them as well.

18 THE COURT: All right. And then -- I've got to take a
19 call.

20 (Pause)

21 THE CLERK: All rise.

22 THE COURT: Please be seated.

23 Now, with respect to the in limine motions, I'm not in
24 a position to fully decide the issue about the testimony of
25 Sergio Pastor and Moises Pastor. So I'll hear it and may

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1 strike it.

2 With respect to Mr. Pastor's NYEHR complaint, I don't
3 think it should be admitted in evidence.

4 MR. DELANEY: Your Honor, may we be heard on that?

5 THE COURT: Well, if we are going to argue these
6 things -- no.

7 MR. DELANEY: OK.

8 THE COURT: It is over. I am just reiterating what is
9 written.

10 And Michele Pauldi, I want to hear her expertise and
11 her background before I make a final decision on that.
12 Otherwise, it seems that she should be admitted.

13 On the physical injuries, it seems to me that the
14 defense is right, that there has not been a sufficient notice
15 for anyone to be a medical expert on that issue, and,
16 accordingly, that part of the damages would be excluded.

17 With respect to the Dr. Goldstein, he cannot testify
18 on the credibility of Buendia.

19 I don't recall what type of drug Moises Pastor is
20 using or the extent, but, of course, if he testifies that he is
21 using heroin and states that he just used it, that would
22 impeach his -- it could be used to impeach his testimony, but
23 otherwise it would not.

24 I don't think the witnesses' immigration status is
25 relevant to the case.

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1 With respect to marital communications, I think that
2 depends on the testimony of Mrs. Caravantes. I think the
3 defense can cross-examine with respect to observations. She
4 can testify as to observations she made, but not as to -- and
5 that she could testify as to individual statements he made; I
6 think that opens the door to the defense questioning him about
7 other individual statements that he made. So it depends on how
8 you present the case, like most cases.

9 I think that covers the motions and I am ready to hear
10 the opening. I think that covers all the motions.

11 MR. DELANEY: Your Honor, before the openings, we had
12 some administrative matters we wanted to raise with the Court.

13 THE COURT: Yes.

14 MR. DELANEY: Mr. Saxena is going to speak to that.

15 MR. SAXENA: Your Honor, we will be -- plaintiffs will
16 be presenting their case in chief one witness via deposition
17 testimony designations. There is no video. We request that
18 the testimony be allowed to be read in open court.

19 THE COURT: You can read it.

20 MR. SAXENA: The parties have made designations,
21 counterdesignations and objections to the deposition testimony
22 of several witnesses. As far as hearing the objections,
23 plaintiffs respectfully submit that those objections be heard
24 in writing, should the Court deem any of the testimony -- deem
25 it needs to rely on any of the testimony for maybe at the close

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1 of the case rather than during the reading of the testimony.

2 THE COURT: Why is that?

3 MR. SAXENA: Just for the purposes of efficiency, to
4 keep the proceedings moving. Unless there is an objection as
5 to -- you know, most of the objections are going to be about
6 whether the testimony can be admitted or hearsay, or things
7 like that, and since we don't have a jury here, we are just
8 thinking that it would be better to get the testimony out.

9 THE COURT: What does the defense say?

10 MR. PARKER: I oppose that, Judge. Just one quick
11 example is in some of the testimony -- it seems the mic cut out
12 again. I'll speak up.

13 (Pause)

14 Just one quick example is that in one of the
15 depositions that the plaintiffs propose to read, there are
16 several proposed designations where it is just rank hearsay,
17 and my position is the Court should rule on those and not let
18 the testimony be read into the record.

19 THE COURT: I am inclined to agree with the defense,
20 because it is going to be very hard for me to go back and then
21 strike out testimony, and I don't know how I will keep track of
22 it.

23 MR. SAXENA: That is fine, your Honor.

24 Just on designations, we will have prepared binders to
25 submit to the Court so that you can read along.

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1 We wanted to ask if the Court will permit a rebuttal
2 case? We are planning on calling just one or two rebuttal
3 witnesses concerning the defendant's affirmative defenses.

4 THE COURT: You want to go do what?

5 MR. SAXENA: Call witnesses in rebuttal following the
6 defendants' case concerning the defendants' affirmative
7 defenses.

8 THE COURT: Yes, you can call rebuttal witnesses.

9 MR. SAXENA: The plaintiffs were also planning to
10 present adverse witnesses in their case in chief, and we were
11 just wondering how the Court envisioned the exam happening,
12 whether it would be all the testimony at once or whether the
13 witness would be recalled again in the defendants' case?

14 THE COURT: It is up to the defendant as to what they
15 are going to do. I can't rule on that in advance.

16 MR. SAXENA: So on a case-by-case basis?

17 THE COURT: I don't know what issue is going to be --
18 would call for it or not.

19 MR. SAXENA: OK. So the Court would permit the
20 defendants to recall the witness if --

21 THE COURT: Sometimes; sometimes not. Sometimes if
22 all you are doing is reiterating a "No, she didn't," or "No, he
23 did it," which has already been testified to.

24 MR. SAXENA: To the extent that a witness is being
25 called as an adverse witness, we just wanted to clarify whether

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1 the scope of the -- what the scope of the examination of that
2 witness is going to be, whether it will be restricted --
3 assuming that the witness is recalled in defendants' case,
4 would we be restricted on cross-examination of that witness to
5 the scope of defendants' direct examination?

6 THE COURT: I don't understand your question. You are
7 saying you want to call someone who is an adverse witness? You
8 call someone as an adverse witness, then you're the one that
9 takes the lead. You can't be limited by their scope because
10 they haven't had any scope.

11 MR. SAXENA: Right. Then let's say that defendants
12 stand up and do a limited examination and reserve the rest of
13 their examination for their own case and then they recall the
14 witness and examine them. We're wondering on cross there will
15 we be limited to the scope of defendants' direct in their own
16 case in chief?

17 THE COURT: I don't know. I've never -- these are all
18 hypothetical questions. I am not used to dealing with these
19 hypothetical questions.

20 MR. SAXENA: That's fine, Judge. We'll take it
21 case-by-case.

22 THE COURT: I would expect a witness would testify to
23 everything that that witness is supposed to testify at the time
24 he is called or she is called, not in bits and pieces. I would
25 expect them to finish their testimony.

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1 MR. SAXENA: OK. Understood, Judge.

2 We also have a protective order in this case Judge. I
3 have copies if you would like me to hand it up.

4 THE COURT: You had better refresh me.

5 MR. SAXENA: Why don't I give you copies. I have
6 copies for counsel, too.

7 Here you go.

8 (Handing to the Law Clerk)

9 MR. SAXENA: Actually.

10 (Handing)

11 MR. SAXENA: I submit that the relevant paragraphs are
12 1 and 10.

13 (Pause)

14 THE COURT: As I read the -- just from your -- I mean,
15 as to those paragraphs, as I read the stipulation, it only
16 relates to information and documents during discovery and that
17 you reserve the right regarding trial to seek guidance from the
18 Court. But how do you propose to do that?

19 MR. SAXENA: Right. So the plaintiffs would propose
20 that, to the extent that material that has been designated
21 confidential under this Order comes up in the proceedings --
22 for example, a medical record is identified as an exhibit that
23 has been marked confidential -- that an attorney be able to
24 request that this portion of the proceedings be also designated
25 confidential pursuant to the Protective Order.

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1 THE COURT: Well, what does the defense say?

2 MR. PARKER: The defense objects to that, Judge. At
3 this point this is a public proceeding, and protections that
4 may have applied during discovery for purposes of discovery no
5 longer exist.

6 THE COURT: How do you feel about the issues -- the
7 credit card information of customers of Remi, does that apply
8 to that?

9 MR. PARKER: I don't believe that there is any
10 sensitive information contained in those documents that would
11 require it.

12 THE COURT: I tried to raise one I thought you might
13 object to.

14 MR. PARKER: I would if that were the case. I don't
15 think that is for sure. I guess I can draw the distinction,
16 Judge, between what information relates to the parties
17 specifically, and Mr. Saxena is using medical records as an
18 example.

19 You come to court. You put on your case. You speak
20 to the public about what your claims are, and the records are
21 admitted into evidence. I don't know how at that point the
22 Court could entertain an application to maintain its secrecy.
23 I've never had that happen before, but I guess there is a first
24 time for everything. But I don't see that that is an issue
25 that is an appropriate one.

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1 MR. SAXENA: Judge, the plaintiffs understand that
2 this could be a case-by-case issue like the others, but we
3 would just like a procedure to be in place to the extent that
4 there is any such confidential information.

5 THE COURT: Well, you don't have any particular
6 interest in any of it being confidential, that's what you're
7 telling me?

8 MR. SAXENA: Are you addressing the plaintiffs, Judge?

9 THE COURT: Yes.

10 MR. SAXENA: I think, again, it will depend on a
11 case-by-case basis. Certain of the medical records, that's
12 correct.

13 THE COURT: You don't give me an example or anything
14 else. You know, I deal with facts; I don't deal with
15 generalities.

16 MR. SAXENA: So, Judge, I suggest that --

17 THE COURT: Do you have any particular notice in any
18 particular document?

19 MR. SAXENA: I suggest that, to the extent that that
20 fact arises, we revisit the issue, your Honor.

21 THE COURT: If you don't know what it is now, I am
22 going to deny your application.

23 MR. SAXENA: OK, Judge.

24 The next question was about the procedure for
25 admitting exhibits into evidence, whether you would like that

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1 to happen during testimony or at the close of the case --

2 THE COURT: As they are offered, admit them or admit
3 them subject to connection.

4 MR. SAXENA: OK. The last point, Judge, Mr. Delaney
5 will address.

6 MR. DELANEY: Your Honor, I just wanted your guidance
7 on one issue.

8 There was a deposition taken in this case by an
9 individual from my law firm who we subsequently found out was
10 not admitted to the Southern District of New York. She was
11 admitted to the New York Bar, and she was supervised by
12 somebody who was admitted to the Southern District of New York.
13 But we discussed with our ethics people in house at Paul Weiss,
14 and while we found no clear rule on whether we could use such a
15 deposition transcript, we wanted the guidance from your Court.

16 We didn't want to potentially put deposition testimony
17 in front of the Court that the Court did not wish to hear
18 because of this issue. So we wanted to seek guidance from the
19 Court in advance.

20 THE COURT: What is the defense position?

21 MR. PARKER: Your Honor, I don't take a position, your
22 Honor. I understand things happen. I am not going to take a
23 position on that.

24 THE COURT: OK. I will allow the deposition.

25 MR. DELANEY: Thank you, your Honor.

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1 I think that concludes the housekeeping matters, your
2 Honor.

3 THE COURT: All right.

4 MR. PARKER: Your Honor, I just have one, and it has
5 to do with witness scheduling and availability. I have one
6 witness who is a resident of Maryland, works in Washington,
7 D.C. I'm just -- I'm trying to work his schedule out. We
8 estimated in the Pretrial Order that the case would take two
9 weeks. It will not be an issue for him to get here next week.
10 But I'm concerned enough that I just want to mention to the
11 Court that there may be a gap. And then, as well, my expert
12 witness is returning from a trip next Monday and is available
13 next Tuesday. I don't think it will be a problem because I
14 think the case will go to that point, but I wanted to bring it
15 to the Court's attention.

16 THE COURT: Do you think the case will be over this
17 week?

18 MR. PARKER: I do not. At least that's --

19 THE COURT: I should tell you that I got that call; I
20 cannot be present this afternoon.

21 MR. PARKER: Oh, OK.

22 THE COURT: I've got to go see a doctor.

23 MR. PARKER: Very well. Thank you.

24 THE COURT: All right. Then let's hear the openings.

25 MR. DELANEY: Yes, your Honor.

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Opening - Mr. Delaney

1 We will have a couple of slides for the opening, your
2 Honor.

3 Your Honor, let me reintroduce myself. My name is
4 Aaron Delaney. I have the privilege of representing the
5 plaintiffs, Mr. Arturo Caravantes and Mr. Francisco Sotarriba.

6 As your Honor knows, this case is about same-sex
7 sexual harassment. Claims are brought by the plaintiffs
8 against the defendants Mr. Oscar Velandia and 53rd Street
9 Partners, which is also known as Remi Restaurants.

10 I would like to start today, your Honor, with what I
11 consider one of the most striking parts of this case, and that
12 is the defendants have admitted that the core sexual conduct at
13 issue in this case happened. Mr. Velandia has admitted to
14 doing this conduct to the plaintiffs. He has admitted to it
15 happening on the premises of Remi Restaurants.

16 Now, the defendants, your Honor, and Mr. Velandia will
17 testify that this conduct that you see here was not sexual
18 harassment because it was a game; it was a game -- a sexual
19 game that was played at Remi Restaurant during business hours.
20 You will hear Mr. Velandia testify that it was not sexual
21 harassment because it was part of the daily routine at Remi
22 Restaurant. And you will hear, your Honor, from Mr. Velandia
23 that with respect to Mr. Caravantes, the sexual conduct was not
24 sexual harassment because it was part of a consensual sexual
25 relationship.

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Opening - Mr. Delaney

1 But, your Honor, you will hear from the plaintiffs
2 that that is simply not true. You will hear from the
3 plaintiffs that they continually told Mr. Velandia "No" and
4 that he didn't listen; that they told Mr. Velandia, your Honor,
5 and they pushed him away, they physically pushed him away but
6 he always came back.

7 You will hear, your Honor, from the plaintiffs that
8 they tried to avoid Mr. Velandia in the restaurant but that he
9 always found them.

10 (Continued on next page)

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Opening - Mr. Delaney

1 MR. DELANEY: (Continued) Your Honor, with respect to
2 plaintiff Francisco Sotarriba, the sexual advances by
3 Mr. Velandia started two years after he started working at the
4 restaurant in 1999. It started with touching of
5 Mr. Sotarriba's genitals.

6 I'm going to show you a map of Remi Restaurant because
7 the physical locations of the harassment are important in this
8 case, your Honor. I am going to ask to show a photo of what's
9 called the middle server station, your Honor. It's right
10 there. These servers stations, your Honor, are in the middle
11 of the dining room.

12 They're used by workers such as Mr. Sotarriba,
13 busboys, food runners. They are used to provide the level of
14 customer service that recommend me expected. They contained
15 linens and napkins, glasses and cups the things that make the
16 day-to-day restaurant work.

17 Your Honor, you are going to hear testimony from
18 Mr. Sotarriba that when he had to use this server station, for
19 example -- and he had to use it multiple times during his
20 shifts -- you will hear that Mr. Velandia would be standing at
21 that computer, for example, and Mr. Sotarriba would come into
22 the server station trying to perform his job. And he would,
23 for example, reach -- your Honor, you can see above the
24 computer there, there's linens -- he use would reach for those
25 linens so he could go re-set the table. While he was reaching

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Opening - Mr. Delaney

1 up, your Honor, in a vulnerable position, Mr. Velandia would
2 reach back and grab his genitals without his permission.

3 You will hear, your Honor, for example, that
4 Mr. Sotarriba would come into the server station and try to
5 maneuver around Mr. Velandia to do his job. He you will hear
6 Mr. Velandia would grind his buttocks into Mr. Sotarriba again
7 without his permission. You will hear Mr. Sotarriba tried to
8 push him away.

9 You will hear as Mr. Velandia was given more power and
10 more authority in the restaurant by the defendants 53rd Street
11 Partners, the management, you will hear that the conduct, the
12 sexual advances got more aggressive, your Honor; that his
13 comments became more aggressive. You will hear that he started
14 demanding oral sex and anal sex from Mr. Sotarriba. Again, you
15 will hear that Mr. Sotarriba said no.

16 Your Honor, you will hear that in approximately
17 December 2007, Mr. Velandia's sexual touching and his comments
18 towards Mr. Sotarriba stopped, but you will also hear your
19 Honor that the harassment did not stop. You will hear that he
20 continued to harass Mr. Sotarriba through assigning him work
21 tasks that were normally done by multiple workers, by
22 threatening repeatedly to fire him, and you will hear, your
23 Honor, that this harassment was because Mr. Sotarriba would not
24 give in to Mr. Velandia's advances.

25 Now, with respect to Mr. Caravantes, your Honor, you

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Opening - Mr. Delaney

1 will hear that his experience at Remi was far worse and more
2 severe; that the physical space where Mr. Caravantes worked was
3 also important, your Honor, when talking about the sexual
4 conduct in this case.

5 Mr. Caravantes works in the middle of the restaurant,
6 it's called the coffee area, your Honor. The important thing
7 about this area, your Honor, is it's isolated from the rest of
8 the restaurant. You cannot see it from the main dining hall,
9 and you cannot see it -- from the main dining room, sorry --
10 and you cannot see it from the Rialto Room at the bottom of the
11 map there, which is also called the private party room. The
12 coffee area is physically isolated from the restaurant. This
13 is where Mr. Caravantes would spend the vast majority of his
14 shifts at Remi Restaurant.

15 This, your Honor, is the coffee area where
16 Mr. Caravantes worked. You can see, your Honor, physically
17 it's got three walls and a narrow entrance; it's a narrow
18 space. This is important, your Honor, because Mr. Velandia
19 would use the isolation of the plaintiffs. He would use this
20 physical space to make the sexual advances.

21 You will hear, your Honor, that he would come into
22 this coffee area and corner Mr. Caravantes before sexually
23 touching him. You will hear, your Honor, that Mr. Caravantes
24 regarded Mr. Velandia's sexual advances as ugly. You will hear
25 that the sexual acts Mr. Velandia performed on Mr. Caravantes

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Opening - Mr. Delaney

1 were rough, and that Mr. Caravantes would have to send his mind
2 somewhere else to get through them. You will hear, your Honor,
3 that Mr. Caravantes submitted to these sexual acts not because,
4 as defendants will testify, that it was an act of a lover but
5 because it was an act of surrender, your Honor.

6 You will hear from two additional witnesses, your
7 Honor, Mr. Pastor, Mr. Moises Pastor and Mr. Sergio Pastor, two
8 brothers. You will hear that they experienced the same thing
9 as the plaintiffs. They experienced the sexual touching, the
10 unwanted sexual touching by Mr. Velandia. And you will hear
11 from these two plaintiffs, who, your Honor, were minors at the
12 time; they were underage when they were working at the
13 restaurant. They were underage when Mr. Velandia made the
14 sexual advances towards them. You will hear that Mr. Velandia
15 pressured them into oral sex, to performing oral sex on them.

16 Your Honor, when you hear all this, the natural
17 question that arises is why didn't the plaintiffs say anything?
18 Because they didn't say anything, your Honor. They did not
19 complain to Remi Restaurant until very late. Their answer,
20 your Honor, is because of the power and authority that I
21 mentioned earlier that Remi Restaurant gave Mr. Velandia. They
22 were simply afraid of Mr. Velandia. They were afraid of losing
23 their jobs. But, your Honor, you will also hear about the
24 shame and humiliation they felt after being subjected to this
25 conduct repeatedly shift after shift, day after day, month

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Opening - Mr. Delaney

1 after month.

2 You will hear, your Honor, from Mr. Caravantes that he
3 did not speak up because of his fear, because he was afraid of
4 losing his job, and that he loved his job, your Honor. You
5 will hear in his voice when he testifies about Remi Restaurant.
6 You will hear how much he loved his job. He worked there for
7 17 years, and it was part of his identity. You will hear from
8 the defendants, your Honor, you will hear them try to use this
9 against him. You will hear them suggest that the reason he
10 filed this lawsuit is because he lost his job at Remi
11 Restaurant. You will hear that is his motive for filing this
12 lawsuit.

13 Your Honor, Mr. Caravantes lost the job at Remi he
14 loved far before he stopped working at the restaurant. He lost
15 the job he loved at Remi in 2005 when Mr. Velandia started
16 making his sexual advances towards him.

17 Your Honor, what you will also hear is that eventually
18 Mr. Caravantes found his voice. He was finally able to tell
19 Mr. Velandia to stop and make him stop. You will hear that he
20 finally complained to Remi Restaurant in October 2007 about
21 sexual harassment at the restaurant. You will hear, your
22 Honor, that in March 2008 he complained again about sexual
23 harassment at Remi to the Division of Human Rights. Both of
24 those times he did not complain, your Honor, about
25 Mr. Velandia's conduct. Plaintiffs admit that, because he was

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Opening - Mr. Delaney

1 not ready. It was too shameful for him, what he endured. You
2 will also hear your Honor when he made these complaints about
3 sexual harassment, there is no dispute they are complaints
4 about sexual harassment, you will hear, your Honor, that Remi
5 did nothing.

6 Your Honor, that leads to the next question: While
7 all of this was going on, because Mr. Velandia will testify it
8 was part of the daily routine at Remi, what was Remi doing
9 while this was happening? The answer, your Honor, is nothing.
10 Remi had no sexual harassment policies. Mr. Deldonne, the
11 owner, has admitted that. They had no training, your Honor.
12 No training regarding sexual harassment for either the
13 employees or for the management. They had no safe and formal
14 complaint procedure to raise issues of sexual harassment at the
15 restaurant. So, your Honor, the answer is Remi did nothing to
16 protect the plaintiffs.

17 Your Honor, what are the consequences of this admitted
18 sexual conduct? Well, your Honor, for Mr. Caravantes the
19 consequences have been devastating. You are going to hear from
20 both experts, your Honor, from experts on both sides of this
21 case that he is suffering from a major depressive disorder.
22 That's been diagnosed. It's been confirmed by health care
23 practitioners not connected with this case. You are going to
24 hear, your Honor, that Mr. Caravantes has been diagnosed with
25 posttraumatic stress disorder because of the conduct; and that

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Opening - Mr. Delaney

1 has also been confirmed by health care practitioners not
2 connected with this case.

3 But, most importantly, you are going to hear testimony
4 from the plaintiff himself. You are going to hear that when he
5 tries to have intimate relations with his wife, he cannot
6 because the voice he hears in his head, your Honor, is what he
7 calls the ugly voice of Mr. Velandia, and he cannot get close
8 to his wife. You are going to hear, your Honor, about his
9 depression. You are going to hear about his thoughts of
10 suicide. You are going to hear about when he stands on the
11 subway platform and the train is approaching, you are going to
12 hear how he wonders if he can fly across. You are going to
13 hear from both plaintiffs how Mr. Velandia's conduct made them
14 feel dead inside. You are going to hear how they withdrew from
15 their families and their friends.

16 Your Honor, as a result of this, at the end of this
17 case, we are going to ask you to return a verdict for the
18 plaintiffs. The plaintiffs are going to ask that you give them
19 compensatory damages for what they suffered, and that you gave
20 them punitive damages against Remi Restaurant. But, your
21 Honor, when we reach that point, when we reach the point of
22 asking you for a verdict, the plaintiffs will have already won
23 because, your Honor, when plaintiffs rest their case, they will
24 have already won because they will finally have had a chance to
25 tell their story. They will have finally had a chance to speak

C3qQcar2

Opening - Mr. Delaney

1 about what was done to them at Remi Restaurant.

2 Thank you, your Honor.

3 THE COURT: Thank you.

4 MR. PARKER: Thank you, your Honor. May I use the
5 podium?

6 THE COURT: Sure.

7 MR. PARKER: Your Honor, my name is Kerry Parker,
8 again. I represent 53rd Street Partners and Oscar Velandia in
9 this case. It's my privilege to do so.

10 Remi Restaurant is an Italian restaurant on 53rd
11 Street in New York. 53rd Street Partners has been the owner
12 and operator of the restaurant since April 2005. Oscar
13 Velandia, has worked at Remi since 1997. He started as a
14 dishwasher. He moved up the ranks before the current owners
15 owned the restaurant and ultimately was promoted to position of
16 waiter, and today he is a head waiter at Remi Restaurant.

17 He has had a -- Mr. Velandia has had a successful
18 career at Remi. He's worked hard. He has the respect of his
19 co-workers. He is not, as the plaintiffs will attempt to
20 prove, your Honor, however, a supervisor or a manager at Remi
21 Restaurant. He has no hiring authority. He has no firing
22 authority. He has no authority to discipline employees. He
23 does not make employees' schedules. He does not supervise
24 employees. He has none of the typical emoluments that a
25 supervisor or a manager in a business would have.

C3qQcar2

Opening - Mr. Delaney

1 What this case is about, Judge, is the taking by
2 plaintiffs of a basic set of facts as to which there is no
3 dispute and fabricating that statement of facts into a
4 construct that has no credibility whatsoever. The plaintiffs
5 and Velandia worked together in the restaurant for years before
6 53rd Street Partners took over.

7 Caravantes at one point in time, frankly, initiated
8 sexual contact and a sexual relationship with Velandia. Now
9 Caravantes says I'm a heterosexual man, I'm not bisexual, and I
10 didn't initiate anything, and I did not enjoy it, and I did not
11 have any interest in it. In fact, it was forced on me.

12 You are going to hear testimony from Mr. Velandia,
13 detailed testimony, about how Caravantes went about initiating
14 this relationship with Velandia, and carried on that
15 relationship with him over the course of approximately two
16 years, two and a half years. During that time, Mr. Caravantes
17 made no complaints about Mr. Velandia. He complained about
18 other employees, but never once did he mention anything about
19 Velandia. And he claims now that in June of 2009 when he filed
20 an amended complaint with the New York State Division of Human
21 Rights, that it was only then, some ten months after he left
22 his employer, that he finally had the courage to complain about
23 Velandia.

24 But what actually happened, as the evidence will show,
25 your Honor, is that Caravantes wanted an easy route to a

C3qQcar2

Opening - Mr. Delaney

1 promotion to become a waiter at the restaurant, and he was told
2 early in 2008 that his position as the coffee operator was
3 going to be eliminated, as was the other coffee operator's
4 position. You will hear testimony about that as well. And
5 that he was given multiple opportunities over the course of
6 2008 to train to become a waiter, to go into other positions.
7 He had one-on-one discussions with the then general manager,
8 Francesco Pistorio, whose testimony you will hear where
9 Mr. Pistorio discussed with him several opportunities within
10 Remi. Velandia would not be deterred. The only acceptable
11 position that he sought was as a waiter

12 THE COURT: Velandia would not be deterred?

13 MR. PARKER: I'm sorry, Caravantes. Caravantes wanted
14 to be a waiter. Nothing else. He would not accept anything
15 else despite multiple conversations over the course of seven
16 months in 2008. His position finally was eliminated in August
17 of 2008. He was then again given the chance to remain with the
18 restaurant, but he demanded only a waiter position; and when
19 that wasn't delivered, he left.

20 You will hear testimony, some of which relates to the
21 sexual relationship that -- the welcome voluntary and
22 consensual relationship -- that Caravantes and Velandia had
23 during 2006 to 2008.

24 Mr. Sotarriba, contrary to what plaintiff's counsel
25 said, did not testify that the sexual touching of him by

C3qQcar2

Opening - Mr. Delaney

1 Velandia intensified after Velandia gained more power. In
2 fact, what he said was Velandia started this conduct, allegedly
3 in about the year 2000, and that it carried on for seven years.
4 And if you do the math, based on his testimony, Judge,
5 Sotarriba claims that Velandia, between making sexually related
6 comments and sexual touching, did this approximately at least
7 20,000 times. And that there is not a shred of evidence -- and
8 it's admitted that Sotarriba said nothing about this until
9 several months after he left the employ.

10 Now, it's admitted that there was this -- you will
11 hear the term -- game. We can call it horseplay. We can
12 denominate it in a number of ways, but you will hear testimony
13 that there was voluntary conduct at the restaurant that
14 involved touching of a sexual nature, and it was among
15 employees who were consenting to that conduct. Sotarriba and
16 Caravantes, you will hear testimony from other employees, that
17 they themselves voluntarily participated in it. Laughed while
18 they did it. Enjoyed it and carried on in that fashion the
19 same way as other employees.

20 Now the story is different. Now they claim it was
21 unwelcome. Now they claim it was upsetting. But their conduct
22 during the time completely belies these assertions.

23 In the end, what we have is some conduct which we
24 probably could say is something that should not occur in a
25 professional working atmosphere. And by that I mean this

C3qQcar2

Opening - Mr. Delaney

1 voluntary touching and fooling around while people are working.
2 But it was welcomed, and it was participated in, not only by
3 the plaintiffs but by other employees.

4 It was not condoned by management. In fact, you will
5 hear testimony that management conducted meetings with
6 employees and told them to stop. Management had an open-door
7 policy. Caravantes himself had several one-on-one discussions
8 with the general manager over the course of time. The door was
9 open. People had the opportunity to complain if they wished,
10 and there were no complaints.

11 So, at end of this case, we will ask, Judge, for you
12 to enter a verdict in favor of 53rd Street Partners and in
13 favor of Oscar Velandia finding that plaintiffs have failed to
14 prove a case of hostile work environment.

15 Thank you.

16 THE COURT: Call your first witness.

17 MR. DELANEY: Plaintiffs are going to call plaintiff
18 Francisco Sotarriba.

19 (Interpreter sworn)

20 THE DEPUTY CLERK: Please state your name and spell it
21 for the record slowly.

22 THE INTERPRETER: Carlos Cruz, C-A-R-L-O-S. Cruz,
23 C-R-U-Z.

C3qQcar2

Opening - Mr. Delaney

1 FRANCISCO SOTARRIBA,

2 called as a witness by the Plaintiff,

3 having been duly sworn, testified through the Spanish
4 interpreter as follows:

5 DIRECT EXAMINATION

6 BY MR. DELANEY:

7 THE DEPUTY CLERK: Please state your name.

8 THE WITNESS: My name is Francisco Sotarriba.

9 MR. DELANEY: Your Honor, just before we get started,
10 I have a binder of exhibits that will be used with these
11 witnesses.

12 BY MR. DELANEY:

13 Q. Good morning, Mr. Sotarriba.

14 A. Good morning.

15 Q. Could you please state your name again for the record?

16 A. My name is Francisco Sotarriba.

17 Q. How old are you?

18 A. 39 years old.

19 Q. What's your primary language?

20 A. Spanish.

21 Q. Do you speak English?

22 A. Very little.

23 Q. Do you read English?

24 A. No.

25 Q. Do you write English?

C3qQcar2

Sotarriba - Direct

1 A. Neither.

2 Q. Are you more comfortable using a translator today?

3 A. Yes.

4 Q. Where were you born, Mr. Sotarriba?

5 A. I was born in Mexico.

6 Q. Where did you grow up?

7 A. I was raised in Mexico City.

8 Q. Where do you live now?

9 A. I live at 1425 College Point Boulevard.

10 Q. In which city?

11 A. Queens.

12 Q. Does anyone live with you?

13 A. I live with my wife and our daughter.

14 Q. What's your daughter's name?

15 A. My name's name is Yezennia. She's 19 years old.

16 Q. What does she do?

17 A. She is a student in high school. She is going to go to
18 university. She wants to study to be a pediatrician.

19 Q. What's your wife's name?

20 A. My wife's name is Liliana.

21 Q. How long have you been married?

22 A. We've been married for approximately four years.

23 Q. How long have you known her for?

24 A. We've lived together for six years.

25 Q. Mr. Sotarriba, are you gay?

C3qQcar2

Sotarriba - Direct

1 A. No.

2 Q. Other than the conduct you allege in this lawsuit, have you
3 ever had sexual relationships with other men?

4 A. No, never.

5 Q. Mr. Sotarriba, does your wife work?

6 A. Yes, she works at a company, but every year about three or
7 four months, she's out of work, and then I have to pay all the
8 bills and rent.

9 Q. Who supports your family financially?

10 A. When she is working, we both do; but when she's not
11 working, I do.

12 Q. Mr. Sotarriba, did you work at Remi Restaurant?

13 A. Yes, I worked at Remi Restaurant.

14 Q. Can you describe Remi Restaurant for the Court?

15 A. It's a big restaurant. Elegant. In the rear of the
16 restaurant there's a space for private parties. It's called
17 Rialto. It's also a very elegant space.

18 Q. What year did you begin working at Remi Restaurant?

19 A. I began to work at Remi at about '99.

20 Q. Are you working there today?

21 A. No.

22 Q. When did you finish working at Remi?

23 A. 2008.

24 Q. What jobs did you have when you worked at Remi Restaurant?

25 A. When I began to work at Remi Restaurant, I started as a

C3qQcar2

Sotarriba - Direct

1 busboy. Later I was given the opportunity to work as a food
2 runner.

3 Q. Do you remember approximately when you became a food
4 runner?

5 A. Like in 2004.

6 Q. Can you describe for the Court what a busboy does at Remi
7 Restaurant?

8 A. The work of a busboy is to bring the bread to the table,
9 place water, and keep it clean. After the people are done, to
10 set up the table again.

11 Q. When you worked as a busboy at Remi Restaurant from
12 approximately 1999 through 2004, what were your hours like?

13 A. Up until 2004, I would work around 45 to 48 hours.

14 Q. How many days a week would you work?

15 A. Four or five.

16 Q. How many shifts would that be approximately?

17 A. I worked six shifts. One day I could work a double. One
18 day I might work dinner. One day I might work lunch.

19 Q. You testified previously you became a food runner in 2004?

20 A. Yes.

21 Q. Did you change jobs after 2004?

22 A. I don't understand your question.

23 Q. Were you still a food runner in 2008 when you left Remi
24 Restaurant?

25 A. Yes.

C3qQcar2

Sotarriba - Direct

1 Q. Between 2004 and 2008, did you have any other jobs at Remi
2 Restaurant?

3 A. No.

4 Q. Can you tell the Court what a food runner does at Remi
5 Restaurant?

6 A. The food runner brings the food from the kitchen to the
7 table because the kitchen is below in the basement. Just wait
8 for the food to be ready and bring it up to the table.

9 Q. What would you do when you brought the food to the table?

10 A. I would serve the food. I could offer them pepper. If a
11 customer asked what the food was prepared with, I had to give
12 them a small explanation. And then return to the kitchen and
13 get more food.

14 Q. What were your hours like as a food runner at Remi
15 Restaurant?

16 A. Well, you could say with the older company it didn't
17 change. I still worked 45 to 48 hours. But not with the new
18 company, because I could work up to 50 hours with them or more,
19 sometimes more.

20 Q. Can you tell the Court what you mean by old company and new
21 company?

22 A. Well, the new company took over in 2005. The owner now is
23 Roberto Deldonne.

24 Q. Is the new company one of the defendants in the lawsuit?

25 A. Yes.

C3qQcar2

Sotarriba - Direct

1 Q. How many days a week did you work as a food runner after
2 the new company took over?

3 A. Sometimes I could work double shifts for three days. Then
4 I could work a lunch and then a dinner.

5 Q. So approximately how many shifts per week would that be?

6 A. Eight, nine.

7 Q. Mr. Sotarriba, how did you feel about your job at Remi?

8 A. I don't understand.

9 Q. Did you like your job at Remi?

10 A. I liked it because I made money. I made good money.

11 Q. Are you working now?

12 A. Yes.

13 Q. Where are you working?

14 A. I'm working at DB Bistro. It's on 44th between 6th and
15 Fifth Avenue. I also work at another restaurant called Lucy
16 Anteroom (ph). That's on 56th between 7th and 6th Avenue.

17 Q. Just for the record, I believe that's Russian Tea Room?

18 A. Yes.

19 Q. What job do you work at DB Bistro?

20 A. At DB Bistro I work as a busboy. And I also work as a
21 busboy at the Russian Tea Room.

22 Q. What are your hours like at those restaurants?

23 A. I work Tuesdays, Wednesdays and Thursdays at DB Bistro. At
24 the other location I work Fridays, Saturdays and Sundays.

25 Q. Again, my question is, do you like your job at those

C3qQcar2

Sotarriba - Direct

1 restaurants?

2 A. Well, I don't have any other choice. I have to work hard.
3 I have to work like this in order to make the money that I used
4 to make at Remi and be able to help my family.

5 Q. Mr. Sotarriba, do you know the defendant, Oscar Velandia?

6 A. Yes.

7 Q. How do you know him?

8 A. Well, he's seated back there.

9 Q. When did you meet him?

10 A. I met him when I began to work at Remi Restaurant. He was
11 already working there at the time. He worked as a waiter.

12 Q. Did he have any other jobs?

13 A. Not that I'm aware of.

14 Q. When you worked as a busboy at Remi Restaurant, did you
15 work with Mr. Velandia?

16 A. Yes, because he worked as a waiter, and I worked as the
17 busboy.

18 Q. Can you describe your interaction with Mr. Velandia during
19 one of your shifts as a busboy?

20 A. Well, just like any other normal job, we worked together;
21 and after about a year or a year and a half, he began to touch
22 me.

23 THE COURT: Let's stay with the question. The answer
24 is not responsive to the question.

25 Q. Mr. Sotarriba, let me ask you a question again. During

C3qQcar2

Sotarriba - Direct

1 your shift as a busboy at Remi Restaurant, can you just
2 describe your interactions with Mr. Velandia, your work
3 interactions?

4 A. Well, yes, we worked together.

5 Q. So how typically would a busboy and waiter work together at
6 Remi Restaurant?

7 A. Well, every day there's a busboy and a waiter that works
8 together.

9 Q. How would they work together?

10 A. Well, the waiter explains the specials. I had to tend to
11 the table, placing water. If they needed something, he could
12 tell me bring them more bread, remove a dirty cup. That's
13 basically the interaction that exists between a waiter and a
14 busboy.

15 Q. In your testimony you said they and he, who did you mean by
16 that?

17 A. I was talking about Oscar Velandia.

18 Q. Approximately when you were working as a busboy,
19 approximately how many times a shift would you come in contact
20 with Mr. Velandia?

21 A. Well, if I worked six, it could have been five.

22 Q. Are you saying how many shifts you would have worked per
23 week with Mr. Velandia?

24 A. I mean, if I worked six or seven shifts in a week, we would
25 probably interact for five of those.

C3qQcar2

Sotarriba - Direct

1 Q. So during one of your shifts, just one of your shifts, how
2 often would you interact with Mr. Velandia?

3 A. The whole shift, the length of the whole shift.

4 THE COURT: How many waiters do you interact with?

5 THE WITNESS: Well, there would be four or five
6 waiters in one shift, and there were also four or five busboys.
7 So there was interaction with other waiters as well as other
8 busboys.

9 Q. Can you describe for the Court how the busboys would be
10 assigned during any particular shift?

11 A. I don't understand.

12 Q. Were busboys assigned a specific area at the restaurant
13 during a shift?

14 A. Yes.

15 Q. Can you describe that to the Court?

16 A. OK. The manager would prepare a map and with a black line
17 he would divide the map into what they called stations, and
18 every station one busboy and one waiter would be responsible
19 for that station of that area.

20 Q. When you were assigned to a station with a waiter, would
21 you interact with that waiter primarily during a shift?

22 A. Yes, because it would be the responsibility of that waiter
23 and that busboy to serve and tend to that area and to keep it
24 clean.

25 Q. Were you assigned to one station per shift or more than one

C3qQcar2

Sotarriba - Direct

1 station?

2 A. One station. However, amongst the busboys we would help
3 each other out.

4 Q. So were you assigned to one waiter per shift or more than
5 one waiter?

6 A. Per shift there were five or six waiters and five or six
7 busboys.

8 Q. So you were not assigned to any specific waiter?

9 A. Yes.

10 Q. So were you assigned to one waiter per shift?

11 A. Yes.

12 Q. So how many shifts per week would you be assigned to
13 Mr. Velandia on average?

14 A. During the week I could have worked one or two shifts with
15 him.

16 Q. When you became a busboy in 2004 -- sorry, a food runner in
17 2004, how many shifts per week would you work with
18 Mr. Velandia?

19 A. I didn't understand the question.

20 Q. It was a bad question. When you worked as a food runner,
21 did you work with Mr. Velandia?

22 A. Well, as a food runner I worked below downstairs at
23 stations in the kitchen, and then I would bring the food up,
24 but there was a little contact or communication.

25 Q. Can you describe that to the Court, the work contact?

C3qQcar2

Sotarriba - Direct

1 A. Well, I would come up, and if a table needed something, and
2 if he happened to be the waiter for that table, I would ask the
3 waiter, do you want a drink, do you want anything? That was
4 the interaction.

5 Q. How many shifts per week when you worked as a food runner
6 would Mr. Velandia also be working as a waiter on average?

7 A. I'd say maybe four.

8 Q. After the new owners took over in 2005, did that change?

9 A. I didn't understand.

10 Q. Did you work more shifts after the new owners took over in
11 2005?

12 A. Yes.

13 Q. So when you worked more shifts, did you work more or less
14 with Mr. Velandia?

15 A. I worked more because when the new company took over, I was
16 working more. Mr. Pistorio made him the head waiter. So he
17 had more responsibility then because he had to be there more.

18 Q. So I understand you worked more under the new owners. Just
19 to be clear, did you work more or less with Mr. Velandia after
20 the new owners took over?

21 A. Yes, more.

22 Q. I am going to put a map.

23 THE COURT: Why did you work more? Why would you work
24 more with Mr. Velandia when he was the head waiter than when he
25 wasn't?

C3qQcar2

Sotarriba - Direct

1 THE WITNESS: Well, Mr. Pistorio told him he was
2 making him the head waiter because he had more knowledge about
3 the restaurant, and that he needed someone with experience, and
4 that's why he was there more.

5 THE COURT: But why would you have contact with him
6 more when he was the head waiter than when he was a waiter?

7 THE WITNESS: I don't understand.

8 THE COURT: Neither did I, that's why I asked the
9 question. Please go ahead, Mr. Delaney. You can expand on
10 that if you want to.

11 MR. DELANEY: Sure.

12 Q. I just want to understand your testimony, Mr. Sotarriba.
13 Is your testimony that you worked more with Mr. Velandia when
14 he became a head waiter?

15 MR. PARKER: Objection. Leading.

16 THE COURT: Objection sustained.

17 Q. How often did you work with Mr. Velandia when he was just a
18 waiter?

19 A. Maybe four shifts.

20 Q. How often did you work with him after he became a head
21 waiter?

22 A. I'd say about the same.

23 Q. Did you interact with Mr. Velandia more or less on each
24 shift when he was a head waiter?

25 A. No, the same.

C3qQcar2

Sotarriba - Direct

1 Q. Mr. Sotarriba, do you recognize the floor plan in this
2 diagram I put up on the screen?

3 A. Yes, I'm familiar -- this is the plan of Remi Restaurant.
4 I'm familiar with it because I worked there for a long time.

5 Q. Do you see on the map -- and I know you don't read much
6 English -- but do you see the words on the map middle server
7 station?

8 A. Yes, I see it.

9 Q. Can you tell the Court what that is?

10 A. That's a station. It's called a station. That's where we
11 have the linens, the cups, the knives, forks, jars of water,
12 everything you could need is there.

13 Q. Did you use this station --

14 THE COURT: Is that the restaurant or is that just
15 part of the restaurant?

16 THE WITNESS: That's the restaurant.

17 THE COURT: What is over there? What's that space
18 where they have this designations middle server station, back
19 server station? Where's the kitchen?

20 THE WITNESS: The kitchen is in the basement.

21 THE COURT: Is it underneath the middle station and
22 back server station?

23 THE WITNESS: It's underneath the Rialto room.

24 THE COURT: Well, I don't understand the sketch.

25 MR. DELANEY: OK.

C3qQcar2

Sotarriba - Direct

1 THE COURT: I see atrium. I don't understand the
2 sketch. What's the building? All I see is the things that
3 would be devoted to serving, and the dots are off to the side.
4 They seem to be outside the building. I don't understand your
5 layout.

6 MR. DELANEY: I am going to ask Mr. Sotarriba to help
7 explain it to the Court.

8 THE COURT: All right.

9 Q. Mr. Sotarriba, starting from the top of the diagram, can
10 you just explain to the Court the layout of Remi Restaurant?
11 Just move down the diagram and explain each location for the
12 Court.

13 A. Well, first is the entrance. To one side is the bar. On
14 the opposite side is the rest rooms and the coat check.

15 MR. DELANEY: Your Honor, would it be helpful to the
16 Court if Mr. Sotarriba had a laser pointer and he could show it
17 on the diagram?

18 THE COURT: Are you telling me the coat check is not
19 outside the building, but is one of those little squares?
20 There is no arrow or anything indicating that it's there,
21 right?

22 THE WITNESS: Yes.

23 THE COURT: Is that it?

24 MR. DELANEY: I apologize, there is a line right there
25 on the map, your Honor, that's indicating where the coat check

C3qQcar2

Sotarriba - Direct

1 is in the restaurant, so it's pointing to that area.

2 THE COURT: I can't see.

3 MR. DELANEY: I apologize. I should have made that
4 clearer.

5 THE COURT: All right. Now I'm beginning to
6 understand. Then in the middle the building has an area way
7 down the middle?

8 THE WITNESS: First in the middle is the middle
9 station where things are kept.

10 THE COURT: Is there an area way in the building?

11 MR. DELANEY: Correct, your Honor. Where the word
12 atrium is, that's a breezeway between two buildings in the
13 town.

14 Q. After the middle server station, Mr. Sotarriba, what comes
15 next?

16 THE COURT: I'm all right now that you've explained it
17 as an area way.

18 Q. For the Court's benefit though, is there a second floor to
19 Remi, or a basement, I should say?

20 A. Yes, that's where the kitchen is, downstairs. The offices
21 are downstairs. There's also another private room called the
22 Chef's Table, and that's for smaller private parties. There's
23 also the locker room where we can change.

24 THE COURT: That's downstairs?

25 THE WITNESS: Yes, your Honor, downstairs in the

C3qQcar2

Sotarriba - Direct

1 basement.

2 Q. So other than the downstairs area and what you see here, is
3 there any other levels to Remi?

4 A. No. Just the rear space which is the Rialto room, but it's
5 the same level.

6 Q. So, I believe we were talking about the middle servers
7 station. Did you use that server station when you were a
8 busboy?

9 A. Yes, I did use that station, because after the people would
10 leave, in order to change the linens, I would have to go into
11 that station to get the linens, the knives, everything, and so,
12 yes, I did use that station.

13 Q. How often per shift when you were a busboy?

14 A. I'd say ten times, 15 times.

15 (Continued on next page)

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C3qdcarr3

Sotarriba - direct

1 Q. Would you use that service station when you were a food
2 runner after 2004, during your shifts?

3 A. Yes, but less.

4 Q. How often per shift when you were a food runner?

5 A. I'd say five, five times.

6 Q. And what would you use it for when you were a food runner?

7 A. Because that's where the pepper was. That's what I used it
8 for.

9 Q. And what about the back server station; do you see that on
10 the map?

11 A. Yes, I see it.

12 Q. Would you use that when you were a busboy?

13 A. Yes, I also used that.

14 Q. And how would you use that when you were a busboy?

15 A. Because there are also linens in that station. There are
16 also knives, cups, forks. That's what I would use it for.

17 Q. How often would you use the back server station when you
18 were a busboy? Per shift. Sorry. Per shift.

19 A. I would say maybe 10 times, 10 to 15 times.

20 Q. Would you use it when you were a food runner?

21 A. Yes, but less.

22 Q. And by "it" I meant the back server station.

23 A. Yes. This one.

24 THE INTERPRETER: Indicating the back server station.

25 Q. Correct.

C3qdcarr3

Sotarrriba - direct

1 A. Yes.

2 Q. And how often would you use it as a food runner?

3 A. I'd say five times or six times during a shift.

4 Q. And as a busboy?

5 A. More, because I could go in there 10 to 15 times.

6 Q. Do you see the area marked "Coffee Area" on this map?

7 A. Yes, I see it.

8 Q. What is that?

9 A. That's the coffee maker area.

10 Q. And what happened there at Remi Restaurant in terms of
11 work?

12 A. That's where the coffee is made, all teas, anything else
13 that might be needed.

14 I also used it as a busboy because I would have to get
15 coffee and take it to the tables.

16 Q. What about when you were a food runner, did you use the
17 coffee area when you were a food runner?

18 A. Sometimes.

19 Q. Why would you use it as a food runner?

20 A. Because there were parties in the Rialto, so I would come
21 up with the food and I would put it in that area, at the coffee
22 maker area, on the tables there. There were tables.

23 Q. Did you take breaks there at Remi Restaurant?

24 A. With the old owners, yes -- with the old company, yes, I
25 did get breaks. But not any more, not when the new company

C3qdcarr3

Sotarriba - direct

1 took over.

2 Q. Did you ever take a break at the coffee area?

3 A. No.

4 Q. I want to pull up a picture of the middle server station.

5 Mr. Sotarriba, do you recognize this photo, what is
6 depicted in this photo?

7 A. Yes, I do recognize it.

8 Q. How do you recognize it?

9 A. Because I used it when I worked there for many years, and I
10 went in there many times.

11 Q. And is it a fair and accurate representation of the middle
12 server station when you worked there?

13 A. Yes.

14 Q. Can you just describe briefly for the Court what the Court
15 is seeing here, each of the components of the middle server
16 station that you see in this photo?

17 A. Above are the linens. In the middle there are some paper
18 there that they keep for the printer that you see there. The
19 box to the side, that's full of the teas, the small teas.

20 Q. Are you speaking about the shelves up at the top of the
21 photo there?

22 A. The box on the shelf. Right below it, yes. Then the
23 computer.

24 Q. What else?

25 A. The computer that you see there, to the side, that's where

C3qdcarr3

Sotarriba - direct

1 all the cups are.

2 Q. Who would use the computer?

3 A. The waiters, Oscar.

4 Q. Were you ever in the server station with Mr. Velandia?

5 A. Yes.

6 Q. How often per shift when you were a busboy, on average?

7 A. Five, six times.

8 Q. How about when you were a runner, how often were you in the
9 service station with Mr. Velandia?

10 A. Three times. It was less.

11 Q. And what would happen when you were in the service station
12 with Mr. Velandia?

13 A. Well, when I was a busboy in that station, if I would go in
14 to get linens, he would reach back and grab my private parts.
15 And sometimes he would push his rear end into me and move
16 around. Other times he would grab my shirt and pull me closer
17 to him as he did that.

18 Other times he made comments. He would say, "Let me
19 suck it. Let me touch it. I want to see -- I want to see how
20 big it is." Those were comments that he made to me.

21 Q. And how -- the touching you described, how did it happen?

22 A. Well, I will repeat again. I would reach for the linens,
23 and he would push his rear end into me and would move around.
24 Sometimes he would pull my shirt to pull me closer to him and
25 do the same thing.

C3qdcarr3

Sotarriba - direct

1 He would grab me with his hand at times in my private
2 parts. Sometimes he made the comments.

3 Q. What would he do with his hand when he grabbed your private
4 parts?

5 A. When he would push his rear end into me, I would push him
6 away. When he tried to grab me, I would push his hand and I
7 would leave.

8 Q. Did this touching, when he grabbed your private parts, did
9 that happen when you were a busboy?

10 A. Yes.

11 Q. How often would that happen?

12 A. I'd say 10 times, or seven times, eight a day, maybe.

13 Q. Did this touching you described happen when you were a food
14 runner?

15 A. As a food runner with the new company, he just made
16 comments.

17 Q. And you described him rubbing his buttocks into you. Would
18 that happen when you were a busboy?

19 A. As a busboy, yes.

20 Q. Would it happen every shift?

21 A. Yes.

22 Q. How often per shift?

23 A. I'd say five times.

24 Q. And would this rubbing you described, would it happen when
25 you were a food runner?

C3qdcarr3

Sotarriba - direct

1 A. No. Because half of my time was spent downstairs and the
2 other half upstairs, and then I would just go into the station
3 to get peppers and he would just make comments.

4 Q. And would the comments that you described, would they
5 happen when you were a busboy?

6 A. Yes.

7 Q. How often?

8 A. I'd say maybe three, four, five times a day.

9 Q. Would these comments happen when you were a food runner?

10 A. Yes.

11 Q. How often?

12 A. Less but I'd say three to four times also.

13 Q. Mr. Sotarriba, can you physically describe the space of the
14 middle server station that you see in the photograph?

15 A. It's small. I'd say maybe two or three people could go in
16 there, where you have to move sideways because it is so small.

17 Q. Can you see into the server station from the restaurant
18 floor?

19 A. Into the station? You can't see there. It is a private
20 station.

21 Q. Why can't you see into it from the restaurant dining room?

22 A. Because there is a wall.

23 Q. How did it make you feel when Mr. Velandia touched you as
24 you described?

25 A. It made me feel ashamed because he would just suddenly grab

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Sotarriba - direct

1 me, and I didn't want Oscar to grab me.

2 Q. How did it make you feel when he rubbed against you as you
3 described?

4 MR. PARKER: Objection.

5 THE COURT: I will allow it.

6 MR. PARKER: Judge --

7 THE COURT: You were about to give me a reason?

8 MR. PARKER: Judge, yes.

9 The reason, Judge, is that the testimony about that
10 particular aspect related only to when Mr. Sotarriba was
11 working for the, quote-unquote, old company prior to 2005. It
12 has nothing to do with this case.

13 MR. DELANEY: Your Honor, Mr. Velandia is named as an
14 individual defendant, and under New York City law he can be
15 held personally liable.

16 THE COURT: I don't know what the statute is. What is
17 the statute of limitations?

18 MR. PARKER: The case was filed in September of 2009;
19 a three-year statute of limitations.

20 MR. DELANEY: Your Honor, but it is a continuing
21 course of conduct. It is relevant to the hostile environment
22 that Mr. Sotarriba suffered for the seven years when he worked
23 at Remi Restaurant. We're not saying that he's liable
24 necessarily for the acts, but it is relevant in terms of the
25 entire course of conduct and the environment.

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Sotarriba - direct

1 THE COURT: I will allow it as background.

2 BY MR. DELANEY:

3 Q. How did you feel when Mr. Velandia rubbed into you as you
4 described in your testimony?

5 THE COURT: Well, wait a minute. Maybe that isn't
6 relevant. Damages seems to be limited to the period within the
7 statute.

8 MR. DELANEY: Your Honor, it is not intended to be a
9 damages question, but I can rephrase the question.

10 MR. PARKER: If it is not intended to be a damages
11 question, what is the point of the question?

12 MR. DELANEY: I can rephrase it.

13 MR. PARKER: It relates to a time period during which
14 there is no potential liability of either defendant.

15 THE COURT: I think Mr. Parker is suggesting you
16 should answer that question.

17 MR. DELANEY: I want to answer it, your Honor, but I
18 don't want to suggest the answer to the witness.

19 THE COURT: Oh, all right. Then I'll just sustain the
20 objection.

21 BY MR. DELANEY:

22 Q. Did you want Mr. Velandia to rub into you like this, as you
23 described in the testimony?

24 A. No, I never wanted that.

25 Q. And how did you feel about the comments that Mr. Velandia

C3qdcarr3

Sotarriba - direct

1 made to you that you described?

2 A. I felt bad. I would get upset. Because I didn't like
3 that; I didn't like those comments.

4 Q. And when you were a busboy, did you want him to touch you
5 as you described?

6 A. No, didn't want that either. I never wanted that.

7 Q. What about when you were a food runner, did you want him to
8 touch you as you described?

9 A. No, neither.

10 Q. What about the comments, did you ever want him to make
11 those comments to you that you described?

12 A. No. I did not.

13 Q. Did you ever touch Mr. Velandia on his private parts?

14 A. No. Never. When he would back his rear end into me, I
15 would push him away. I never touched him.

16 Q. Did you make comments to Mr. Velandia, sexual comments, as
17 you described them?

18 A. No. Never.

19 Q. Mr. Sotarriba, this conduct that you described that
20 occurred in this middle server station, did you complain about
21 it to anyone at Remi Restaurant?

22 A. No, I did not complain.

23 Q. Why not?

24 A. Because when the new company came in -- well, six months
25 after the new company came in, Mr. Pistorio, at a party, he

C3qdcarr3

Sotarriba - direct

1 introduced him as a manager.

2 Q. Who is "him"?

3 A. Mr. Velandia, Oscar Velandia. He was introduced as a
4 manager. So he was automatically a manager, and then I was
5 afraid.

6 Q. Do you remember anything else about that meeting that you
7 just described?

8 A. Well, he described him as a manager and he said we had to
9 respect him.

10 Q. Who described him as a manager?

11 A. Mr. Pistorio.

12 Q. What kind of meeting was it?

13 A. It was a party that we had. In like five or ten minutes
14 before the start of the party, the manager had a meeting to
15 give all the waiters their instructions as well as the bus
16 boys, all the personnel that was working. And he showed up
17 with a suit. And Pistorio called him over and said, "This is
18 the manager now and he has to be respected."

19 Q. Who showed up with a suit?

20 A. Oscar Velandia.

21 Q. And do you recall -- looking at this map, do you recall
22 where this meeting happened?

23 A. Yes, I do remember.

24 Q. Would you tell the Court.

25 A. It was this area here.

C3qdcarr3

Sotarriba - direct

1 THE INTERPRETER: Indicating the main dining room.

2 A. Yes. Right around there.

3 Q. You testified about a Mr. Pistorio a few times. Can you
4 tell the Court who that is?

5 A. Pistorio is the gentleman that came in as the general
6 manager with the new company.

7 Q. Was he the general manager the entire time you worked there
8 at the new company?

9 A. Yes.

10 Q. Do you remember approximately when this meeting happened
11 you just described where Mr. Pistorio announced that
12 Mr. Velandia was going to be a manager?

13 A. No, I don't remember, but I do recall that he was
14 introduced that way.

15 Q. Do you remember approximately when it was?

16 A. Maybe six or seven months after the new company came in.

17 Q. Were there any other reasons that you didn't complain to
18 anyone at Remi about the conduct you described by Mr. Velandia?

19 A. Well, I was afraid of losing my job because I made good
20 money there. And as a manager, he had the power of firing and
21 hiring people. So I was very fearful because of that.

22 Q. Who had the power, Mr. Sotarriba?

23 A. Oscar Velandia.

24 Q. Why?

25 A. And I was afraid of being fired. Because at the meetings

C3qdcarr3

Sotarriba - direct

1 that Pistorio held at the restaurant, there was a meeting in
2 the morning, another in the afternoon before the service
3 started, like explaining the specials and offering instruction
4 to the personnel, to the waiters. He would say at those
5 meetings, "Oscar has the power to hire and fire people."

6 Q. Who would say?

7 A. Mr. Pistorio said that Oscar had the power, and that's why
8 I was afraid; that's why I never complained.

9 Q. Were you at one of the meetings where Mr. Pistorio said
10 this?

11 A. Yes. Myself and everyone else that was working their
12 shift -- waiters, busboys, Oscar was there, Mr. Pistorio was
13 there.

14 Q. Did Mr. Pistorio say that Mr. Velandia had the power to
15 hire and fire at only one meeting or more than one meeting?

16 THE COURT: Objection sustained to the form of the
17 question.

18 Put a new question.

19 Q. How often did Mr. Pistorio say that Mr. Velandia had the
20 power to hire and fire?

21 A. He always said it.

22 Q. Did he say that at every meeting?

23 A. In some meetings he said it.

24 Q. How many meetings were you present at where he said it,
25 approximately?

C3qdcarr3

Sotarriba - direct

1 A. I'd say at least three a week.

2 Q. And do you recall approximately -- sorry, go ahead.

3 A. And there are examples, if you want an example, where he
4 fired someone, where Oscar fired someone.

5 Q. That's OK. Do you remember approximately when the first
6 meeting happened when he said these things, if you remember?

7 A. That he had that power?

8 (Pause)

9 It was after that party, when he introduced him that
10 way, the following day he began to say that, that Oscar had
11 that power.

12 Q. Mr. Sotarriba, you testified earlier about some of the
13 conduct by Mr. Velandia in the middle server station. Did you
14 ever say anything to him when he touched you?

15 A. Yes. On some occasions I told him to calm down or that I
16 was going to hit him in the face because I didn't like that.
17 But he didn't stop; he continued.

18 Q. Anything else?

19 A. I said that I'm not gay and that I didn't like gay men.

20 Q. I'm going to put up a photo of the back server station on
21 the map.

22 Do you recognize what is on this photo?

23 A. Yes.

24 Q. What is it?

25 A. That's the station, like it says there, the back server

C3qdcarr3

Sotarriba - direct

1 station. I'm familiar with it as well because I went in there
2 many times.

3 Q. Were you in there with Mr. Velandia?

4 A. Well, yes.

5 Q. What happened?

6 THE COURT: Could we have a date?

7 Q. When were you in the station with Mr. Velandia?

8 A. During my shifts at work that would happen.

9 Q. Were you in there with him when you were a busboy?

10 A. Yes, because when I would go in there he would be there
11 using the computer.

12 Q. Were you in there with him after you became a food runner
13 in 2004?

14 A. Yeah, sometimes. Less but yes.

15 Q. Were you in the station with Mr. Velandia after 2005, when
16 the new owners took over?

17 A. Yes.

18 Q. Can you tell the Court what happened with Mr. Velandia
19 after -- I'm sorry, when you were a busboy?

20 A. When I worked as a busboy, I would have to go to that
21 station to get linens when I was changing them, and there were
22 times that Oscar would be using that computer. And the same
23 way, he would reach back with his hand and grab me and would
24 make comments as well. The same way: "Let me suck it. I want
25 to suck it. I want to feel it. I want to see how big it is.

C3qdcarr3

Sotarrriba - direct

1 Let me touch you."

2 And I would always reject him. When he tried to grab
3 me, when Oscar would try to grab me with his hand by reaching
4 back, I would push his hand.

5 Q. Mr. Sotarrriba, can you describe for the Court the physical
6 space of this back server station?

7 A. It's small. Also, maybe two or three people fit there, but
8 you also have to move sideways in order to avoid touching
9 anyone. It's small. But you can't see inside the station from
10 outside of it.

11 Q. To be clear, can you describe the walls you see in this
12 photo?

13 A. Well, it's a wall about this high.

14 Q. How high? Can you tell us for the record?

15 A. It's about up to here (Indicating).

16 MR. DELANEY: Let the record indicate that the witness
17 is indicating eye level.

18 A. Yes.

19 Q. So what could you see from the restaurant floor -- sorry.
20 If you were standing outside the server station and someone was
21 standing inside, what could the person outside see?

22 A. You could just see part of the head; that's it.

23 Q. After the new company took over in 2005, would you be in
24 this station with Mr. Velandia?

25 A. Yes, because he used it.

C3qdcarr3

Sotarriba - direct

1 Q. What would happen?

2 A. He would reach back and grab my private parts with his
3 hand, and I would push his hand away and I would leave. But it
4 happened less because I was working as a food runner.

5 Q. Did you want him to grab you in the way you described?

6 A. No, I never wanted him to grab me, but he would just
7 surprise me and grab me. And I felt ashamed.

8 Q. Do you recognize this photo, Mr. Sotarriba?

9 A. Yes. This is the coffee maker area, and I'm familiar with
10 it because I went there many times, yes.

11 Q. Is it a fair and accurate representation of the coffee area
12 that you worked at in Remi Restaurant?

13 A. Yes.

14 Q. And when you were a busboy, were you ever in this area with
15 Mr. Velandia?

16 A. No.

17 Q. When you were a food runner, were you ever in this area
18 with Mr. Velandia?

19 A. Yes.

20 Q. What happened?

21 A. I would be there. He would pass by.

22 Q. Who would pass by?

23 A. Oscar would pass by and grab me. And he would say, "Oh,
24 let me touch it," and then leave.

25 Q. Where would he grab you?

C3qdcarr3

Sotarriba - direct

1 A. My private parts.

2 Q. Why would you be in that area when you were a food runner?

3 A. Because at the close of the meetings that were held before
4 the start of the service, I would go there to drink coffee.

5 That's why I went there.

6 Q. And how often did Mr. Velandia grab you in the way you just
7 described, or touch you in the way you just described?

8 A. As a food runner?

9 Q. Yes.

10 A. It was less.

11 Q. Can you approximate how many times he did that here in the
12 coffee area?

13 A. Two or three times.

14 Q. In total?

15 A. Yes.

16 Q. How would you --

17 THE COURT: Who was there with you and Velandia?

18 THE WITNESS: One time Caravantes saw it. He was
19 there when he passed by and grabbed me. And other occasions
20 there were other busboys there; I don't remember their names.
21 But they would also go to drink coffee and we would just be
22 there.

23 THE COURT: So there were other people present during
24 these --

25 THE WITNESS: Yes.

C3qdcarr3

Sotarriba - direct

1 BY MR. DELANEY:

2 Q. And how did you react when Mr. Velandia touched you in the
3 way you just described?

4 A. I would feel ashamed because I didn't want him to touch me,
5 and I would leave.

6 Q. Did you say anything?

7 A. No, because he would pass by, grab me, and leave himself.

8 Q. And you testified that Mr. Caravantes saw one of these
9 incidents?

10 A. Yes.

11 Q. What, if anything, did you say during that incident?

12 A. Manuel said, "Hey, what's happening?" And I said, "He's
13 the manager. What can I do?" I took my coffee and left.

14 THE COURT: You are talking about the busboy?

15 MR. DELANEY: Sorry. For clarification --

16 THE COURT: The busboy?

17 BY MR. DELANEY:

18 Q. Carlos, the Translator, said "Manuel." If you would just
19 clarify that for the record?

20 A. Caravantes.

21 Q. So I will ask the question again.

22 A. Arturo Caravantes.

23 Q. What, if anything, did you say during the incident you just
24 described when Mr. Caravantes saw one of these incidents?

25 A. He said, "Hey, what's happening? He touched you." And I

C3qdcarr3

Sotarriba - direct

1 said, "He's the manager. What can I do?"

2 I grabbed my coffee and I left, and I didn't make any
3 additional comments.

4 THE COURT: I'm sorry, I have to stop now, I guess,
5 for the day.

6 We will come back tomorrow at 9:30.

7 (Adjourned to 9:30 a.m., Tuesday, March 27, 2012)

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